In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-60

WILLIE B. VINCENT AND FLORIDA VINCENT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners contend that the court of appeals erred in holding that a "community action agency," within the meaning of Title II of the Economic Opportunity Act of 1964, 78 Stat. 516, as amended, 42 U.S.C. 2781 *et seq.*,[1] is not a federal agency or in-

[1] A community action agency is a "State or political subdivision of a State * * * or a public or private nonprofit agency or organization which has been designated by a State or * * * political subdivision * * * which * * * is determined to be capable of planning, conducting, administering and evaluating a community action program * * *." 42 U.S.C. 2790(a)(2).

strumentality within the meaning of the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 *et seq.*

Christopher Smith and Sharon Vincent, preschool children, participated in an outing sponsored by Arkansas Mid-Delta Office of Economic Opportunity, Inc. (Mid-Delta), a private non-profit corporation designated as a community action agency by Phillips and Monroe Counties, Arkansas. They sustained bodily injuries when the automobile in which they were riding, which was driven by an employee of Mid-Delta, was involved in an accident. Petitioners, their parents, instituted this action pursuant to the Federal Tort Claims Act, alleging that the accident was caused by the negligence of the employee and seeking damages for the personal injuries received in the accident (Pet. App. A, pp. 8-10; Pet. App. B, pp. 12-20).

The United States moved to dismiss on the ground that community action agencies such as Mid-Delta are not federal agencies or instrumentalities and consequently that the United States is not liable for the negligent acts of their employees. The district court granted the motion (Pet. App. B, pp. 20-22); the court of appeals affirmed (Pet. App. A, pp. 10-11).

The decision of the court of appeals is correct. We agree with petitioners, however, that there is a conflict among the circuits on this issue that should be resolved by this Court. In *Orleans* v. *United States*, 509 F.2d 197, the Sixth Circuit, held, directly contrary to the decision below, that a community action

agency is a federal agency for purposes of the Federal Tort Claims Act and that therefore the United States may be held liable under that Act for tortious acts of community action agency employees. The United States has filed a petition for a writ of certiorari in *Orleans* (No. 75-328).[2] Accordingly, we do not oppose the granting of the petition for a writ of certiorari in this case.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

[2] We are furnishing petitioners with a copy of our petition in *Orleans*.

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